

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

by deleting Sections 1 through 5, and by substituting in their place the following new sections,  
and by renumbering the remaining sections:

SECTION 1. Tennessee Code Annotated, Section 63-6-204 is amended by  
adding the following language:

( ) Notwithstanding the provisions of this section, nothing herein shall prohibit a  
hospital licensed under Title 68, Chapter 11, or Title 33, Chapter 2, or an affiliate of a  
hospital, from employing licensed physicians other than radiologists, anesthesiologists,  
pathologists, or emergency physicians, to provide medical services, subject to the  
following conditions:

(a) Employing entities shall not restrict or interfere with medically appropriate  
diagnostic or treatment decisions.

(b) Employing entities shall not restrict or interfere with physician referral  
decisions unless:

(1) the physician so employed has agreed in writing to the specific restrictions at  
the time that the contract is executed; and,

(2) the restriction does not, in the reasonable medical judgment of the physician,  
adversely affect the health or welfare of the patient; and

(3) the physician is not precluded from disclosing any such restrictions.

(c) In the event that there is any dispute relating to (a) or (b), the employing entity  
shall have the burden of proof.

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

( ) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as follows:

(1) For physicians from whom the employing entity has made a bona fide purchase of the physician's practice, the employing entity may impose reasonable geographic restrictions upon the employed physician's practice, provided that:

(A) The maximum allowable area of the restriction is the greater of:

- (i) the county in which the primary practice site is located; or
- (ii) a ten mile radius from the primary practice site, and

(B) The duration of the restriction is two years or less, unless a longer period not to exceed five years is agreed to in writing and is required to comply with federal statutes, rules, regulations, or IRS revenue rulings or private letter rulings; and,

(C) Any employment agreement or medical practice sale agreement restricting the right of a physician to practice shall:

(i) allow the physician to buy back his or her medical practice for the original purchase price of the practice, or, in the alternative, if the parties agree in writing, at a price not to exceed the fair market value of the practice at the time of the buy back, at which time any such restriction on practice shall be void; and

**AMENDMENT NO.** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

(ii) not require that the physician give more than thirty days notice to exercise the repurchase option; however, this provision shall not otherwise affect the contract termination notice requirements.

(D) If the buy back provision is dependent upon a determination of the fair market value of the practice , the contract shall specify the method of determining fair market value by independent appraisal in the event that the parties cannot agree as to the fair market value. The contract shall also include the following language:

In the event that the employing entity and the physician cannot agree upon the fair market value of the practice within ten business days of the physician's notice of intent to repurchase the practice, the physician may remove any contractual restrictions upon his/her practice by tendering to the employing entity the amount that was paid to him/her for the practice. The employing entity or the physician may then seek a determination of the fair market value of the practice by the independent appraisal method specified by contract.

(2) For physicians employed independently of a bona fide practice purchase, and who have practiced for more than five years in the county in which the hospital or primary practice site is located, the employing entity may restrict the employed physician's right to treat for compensation or to directly solicit by telephone or mail the patients treated during the course of the employment relationship, but only for one year or less following the termination or conclusion of the employment relationship.

**AMENDMENT NO.** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

<b>FILED</b>
Date _____
Time _____
Clerk _____
Comm. Amdt. _____
_____

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

(3) For physicians employed independently of a bona fide practice purchase, and who have practiced for less than five years in the county in which the hospital or primary practice site is located, the employing entity may only restrict the employed physician's right to directly solicit by telephone or mail the patients treated during the course of the employment relationship, but only for one year or less following the termination or conclusion of the employment relationship.

Notwithstanding the foregoing, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by the employee, any such restrictions shall be void.

( ) In any event, nothing herein shall prohibit a licensed physician, or group of licensed physicians, including, without limitation, a physicians' professional corporation registered under Title 48, Chapter 3 from employing physicians.

( ) A hospital affiliate that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities, or the ownership of property and facilities used in the provision of health care services. An affiliate of a hospital that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under either Title 68, Chapter 11, or Title 33, Chapter 2 in connection with employment of physicians. Any violation of this statute by an affiliate shall subject any hospital, (i) at which the physician has staff

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

privileges, and, (ii) that controls or is under common control with the affiliate, to the penalties and sanctions applied to hospitals that employ physicians.

( ) For purposes of this section:

"Radiologist" is defined as a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including without limitation diagnostic radiology, radiation therapy, and radiation oncology.

"Anesthesiologist" is defined as a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including without limitation nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances.

"Pathologist" is defined as a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including without limitation anatomic and clinical pathology.

"Emergency physician" is defined as a physician who has:

(a) either:

(i) completed a residency in emergency medicine, or

(ii) practiced emergency medicine full-time for a three year period, and

(b) whose practice is limited to emergency medicine. This definition shall not include, however, a physician who has been previously employed to provide non-

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

emergent medical services who, over a period of twelve (12) months or more, becomes a full time emergency physician and who remains employed by mutual agreement.

"Affiliate" of a hospital means an entity that directly or indirectly is controlled by, or is under common control with, a hospital licensed under Title 68, Chapter 11 or Title 33, Chapter 2. Affiliate shall not mean, however, a health maintenance organization licensed under Title 56, Chapter 32.

"Employing entity" means a hospital licensed under Title 68, Chapter 11, or Title 33, Chapter 2, or an affiliate of such an entity, that employs one or more physicians. Employing entity shall not mean, however, a health maintenance organization licensed under Title 56, Chapter 32.

"Physician" means a person licensed pursuant to Title 63, Chapters 6 or 9.

( ) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital and no hospital or an affiliate of a hospital may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, however, a physician may be employed to provide emergency medical services if such physician is employed to provide other medical services.

SECTION 2. Tennessee Code Annotated, Section 63-6-225 is amended by adding the following language as a new subsection (b), and by relettering the remaining subsection:

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

( ) The provisions of this section do not prohibit a physician from compensating any independent contractor that provides goods or services to a physician on the basis of a percentage of the physician's fees generated in the practice of medicine. The percentage paid must be reasonably related to the value of the goods or services provided. Payments by physicians in return for referrals are prohibited.

SECTION 3. Tennessee Code Annotated, Section 68-11-205 is amended by adding the following language:

( ) Notwithstanding the provisions of this section, nothing herein shall prohibit a hospital licensed under Title 68, Chapter 11, or an affiliate of a hospital from employing physicians, other than radiologists, anesthesiologists, pathologists, or emergency physicians, licensed under Title 63, Chapters 6 or 9, subject to the following conditions:

(a) Employing entities shall not restrict or interfere with medically appropriate diagnostic or treatment decisions.

(b) Employing entities shall not restrict or interfere with physician referral decisions unless:

(1) the physician so employed has agreed in writing to the specific restrictions at the time that the contract is executed; and,

(2) the restriction does not, in the reasonable medical judgment of the physician, adversely affect the health or welfare of the patient; and

(3) the physician is not precluded from disclosing any such restrictions.

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

(c) In the event that there is any dispute relating to (a) or (b), the employing entity shall have the burden of proof.

( ) Employing entities shall not restrict the employed physician's right to practice medicine upon the termination or conclusion of the employment relationship, except as follows:

(1) For physicians from whom the employing entity has made a bona fide purchase of the physician's practice, the employing entity may impose reasonable geographic restrictions upon the employed physician's practice, provided that

(A) The maximum allowable area of the restriction is the greater of:

(i) the county in which the primary practice site is located; or

(ii) a ten mile radius from the primary practice site, and

(B) The duration of the restriction is two years or less, unless a longer period not to exceed five years is agreed to in writing and is required to comply with federal statutes, rules, regulations, or IRS revenue rulings or private letter rulings; and,

(C) Any employment agreement or medical practice sale agreement restricting the right of a physician to practice shall:

(i) allow the physician to buy back his or her medical practice for the original purchase price of the practice, or, in the alternative, if the parties agree in writing, at a price not to exceed the fair market value of the practice at the time of the buy back, at which time any such restriction on practice shall be void; and



**AMENDMENT NO.** \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

(ii) not require that the physician give more than thirty days notice to exercise the repurchase option; however, this provision shall not otherwise affect the contract termination notice requirements.

(D) If the buy back provision is dependent upon a determination of the fair market value of the practice, the contract shall specify the method of determining fair market value by independent appraisal in the event that the parties cannot agree as to the fair market value. The contract shall also include the following language:

In the event that the employing entity and the physician cannot agree upon the fair market value of the practice within ten business days of the physician's notice of intent to repurchase the practice, the physician may remove any contractual restrictions upon his/her practice by tendering to the employing entity the amount that was paid to him/her for the practice. The employing entity or the physician may then seek a determination of the fair market value of the practice by the independent appraisal method specified by contract.

(2) For physicians employed independently of a bona fide practice purchase, and who have practiced for more than five years in the county in which the hospital or primary practice site is located, the employing entity may restrict the employed physician's right to treat for compensation or to directly solicit by telephone or mail the patients treated during the course of the employment relationship, but only for one year or less following the termination or conclusion of the employment relationship.

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor****FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290****House Bill No. 0712**

(3) For physicians employed independently of a bona fide practice purchase, and who have practiced for less than five years in the county in which the hospital or primary practice site is located, the employing entity may only restrict the employed physician's right to directly solicit by telephone or mail the patients treated during the course of the employment relationship, but only for one year or less following the termination or conclusion of the employment relationship.

Notwithstanding the foregoing, in the event that the employment contract with a physician employed independently of a bona fide practice purchase is terminated by the employing entity for reasons other than breach by employee, any such restrictions shall be void.

( ) A hospital affiliate that employs physicians shall not engage in any business other than the employment of physicians, the management of physicians and health care facilities or the ownership of property and facilities used in the provision of health care services. An affiliate of a hospital that employs physicians pursuant to this part shall be subject to the authority of the applicable licensing board under either Title 68, Chapter 11, or Title 33, Chapter 2 in connection with employment of physicians. Any violation of this statute by an affiliate shall subject any hospital, (i) at which the physician has staff privileges, and (ii) that controls or is under common control with the affiliate, to the penalties and sanctions applied to hospitals that employ physicians.

( ) For purposes of this section:

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

"Radiologist" is defined as a physician who has completed a residency in radiology and whose practice is primarily limited to radiology, including without limitation diagnostic radiology, radiation therapy, and radiation oncology.

"Anesthesiologist" is defined as a physician who has completed a residency in anesthesiology and whose practice is primarily limited to anesthesiology, including without limitation nerve block, pain management, cardiac and respiratory resuscitation, respiratory therapy, management of fluids, electrolyte and metabolic disturbances.

"Pathologist" is defined as a physician who has completed a residency in pathology and whose practice is primarily limited to pathology, including without limitation anatomic and clinical pathology.

"Emergency physician" is defined as a physician who has:

(a) either:

(i) completed a residency in emergency medicine, or

(ii) practiced emergency medicine full-time for a three year period, and

(b) whose practice is limited to emergency medicine. This definition shall not include, however, a physician who has been previously employed to provide non-emergent medical services who, over a period of twelve (12) months or more, becomes a full time emergency physician and who remains employed by mutual agreement.

"Affiliate" of a hospital means an entity that directly or indirectly is controlled by, or is under common control with, a hospital licensed under Title 68, Chapter 11 or Title

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

33, Chapter 2. Affiliate shall not mean, however, a health maintenance organization licensed under Title 56, Chapter 32.

"Employing entity" means a hospital licensed under Title 68, Chapter 11, or Title 33, Chapter 2, or an affiliate of such an entity that employs one or more physicians. Employing entity shall not mean, however, a health maintenance organization licensed under Title 56, Chapter 32.

"Physician" means a person licensed pursuant to Title 63, Chapters 6 or 9.

( ) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital and no hospital or an affiliate of a hospital may employ any physician to provide medical services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, however, a physician may be employed to provide emergency medical services if such physician is employed to provide other medical services.

( ) Employing entities shall not require, by contract or policy, that as a condition or consequence of employment, written or otherwise, employed physicians relinquish medical staff privileges, or the rights related thereto, upon the commencement of, upon any event during the pendency of, or at the termination or conclusion of, the employment relationship. In any event, nothing hereunder shall be construed as affecting or negating the ability of an employing hospital to revoke or suspend a physician's staff privileges in accordance with the procedures set forth in the medical staff bylaws. Hospitals shall not

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor****FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290****House Bill No. 0712**

substitute physician employment contracts for medical staff privileges. Nonemployed and employed physicians holding staff privileges at a hospital which is an employing entity, or hospitals on which employed physicians hold staff privileges that are affiliates of employing entities, shall enjoy the same privileges, rights and protections with respect to medical staff membership. Employment of a physician shall not affect any other physician's medical staff privileges. Physicians who hold membership on medical staffs at a hospital which is an employing entity, or a hospital on which employed physicians hold staff privileges that are affiliates of employing entities, shall be provided with the rights and protections, including rights of self-governance, afforded by the applicable state licensing board, and, when accredited, the accrediting entity or agency.

( ) If a physician, in connection with a claim for breach of contract or other dispute related to §63-6-204, establishes in a court of competent jurisdiction, or other forum including in a peer review action or arbitration proceeding, that the conditions of Tenn. Code Ann., §63-6-204, have been violated by the employing entity, the physician shall be entitled to recover the physician's cost of litigation, arbitration, or peer review defense, and a reasonable attorney's fee.

( ) In any event, nothing herein shall prohibit a licensed physician, group of licensed physicians, including, but not limited to, a physicians' professional corporation registered under Title 48, Chapter 3, from employing physicians.

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

( ) No radiologist, anesthesiologist, pathologist, or emergency physician may be employed by a hospital or an affiliate of a hospital and no hospital or an affiliate of a hospital may employ any physician to provide services provided by radiologists, anesthesiologists, pathologists, or emergency physicians; provided, however, physicians may be employed to provide emergency medical services if such physician is employed to provide other medical services.

SECTION 4. Tennessee Code Annotated, Title 68, Chapter 11, Part 2 is amended by adding thereto the following new section:

( ) (a) A hospital shall not:

(1) require hospital-based physicians to pay for the cost of the use of necessary medical equipment related to the provision of medical services by the hospital-based physicians, or

(2) require hospital-based physicians to share in the cost of advertising related to their services or services of the hospital, unless specifically required by contract.

(b) The termination of an oral or written contract between a hospital and a hospital-based physician shall not result in loss of medical staff privileges, through contractual provisions or hospital policy, unless there is a written contract that contains a section separately executed by the parties that provides for the loss of medical staff privileges:

AMENDMENT NO. \_\_\_\_\_

\_\_\_\_\_  
**Signature of Sponsor**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

**AMEND Senate Bill No. 1290**

**House Bill No. 0712**

(1) if such physician is provided with at least six (6) months written notice of the termination of the contract, and

(2) if either:

(A) such physician provides medical services under the contract to a department of the hospital that is closed and will remain closed after termination of the contract, or

(B) if such physician provides medical services under the contract to a department of the hospital that is open, but will be closed after termination of the contract. In the case of an emergency physician, the notice of termination described in the preceding sentence may be less than six (6) months in order to obtain emergency coverage to satisfy requirements of state licensing rules, accreditation or applicable managed care plans.

(c) As used in this section, the term "hospital-based physician" means an anesthesiologist, emergency physician, pathologist, or radiologist.

AND FURTHER AMEND by renumbering the remaining Sections 6 and 7 accordingly.